



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801

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[www.deq.virginia.gov](http://www.deq.virginia.gov)

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION

#### ORDER BY CONSENT

#### ISSUED TO

**WhiteWave Foods Company (successor to Morningstar Foods, Incorporated)**

**Registration Number: 81100**

#### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and WhiteWave Foods Company, for the purpose of resolving certain alleged violations of environmental law and regulations.

#### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Facility" means the WhiteWave Foods Company Manufacturing Plant (successor to Morningstar Foods, Incorporated) located at 6364 South Valley Pike, Mount Crawford, Virginia. The facility manufactures milk and soy food products.
6. "NOV" means Notice of Violation.

7. "Order" means this document, also known as a Consent Order.
8. "Permit" means WhiteWave Food Company's (successor to Morningstar Foods, ~~Incorporated~~) Stationary Source Permit to Modify and Operate dated August 25, 2005, Registration Number 81100. *edh*
9. "Regulation" means the Virginia Regulations for the Control and Abatement of Air Pollution, 9 VAC 5-10-10 et seq.
10. "Va. Code" means the Code of Virginia (1950), as amended.
11. "VRO" means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
12. "WhiteWave" means WhiteWave Foods Company, a wholly owned subsidiary of Dean Foods, ~~Inc.~~ and successor to Morningstar Foods, ~~Incorporated~~. *Company* *GAH*

**SECTION C: Findings of Facts and Conclusions of Law**

1. WhiteWave is the owner and operator of the Facility, which is the subject of a Notice of Violation (NOV) issued on May 23, 2007.
2. On April 2, 2007, DEQ received a complaint of objectionable odors coming from WhiteWave, specifically from the wastewater pretreatment system. A DEQ inspection revealed a persistent, objectionable wastewater odor emanating from the treatment tanks. On April 3, 2007, DEQ issued a Request for Corrective Action requiring that permanent odor control be undertaken. An e-mail from a Facility representative on May 1, 2007, indicated that odor control improvements had been implemented and were functional. In response to ongoing odor complaints from the public, DEQ conducted daily odor surveillance of the Facility as follows: May 1 through May 16, May 18, and May 20 through May 22. On each of these dates, a DEQ inspector positioned downwind of the Facility continued to observe persistent, objectionable wastewater odors.

9 VAC 5-40-140 of the Regulation states that no owner or other person shall cause or permit to be, discharged into the atmosphere from any affected facility any emissions which cause an odor objectionable to individuals of ordinary sensibility.

3. On May 14, 2007, DEQ conducted a site inspection of WhiteWave. The following observations and apparent violations were documented in the referenced NOV:
  - a. Two additional dry-mix process lines and approximately fifteen additional ink jet coders had been installed at the facility without filing an updated permit application.

Condition 1 of the Permit states that except as specified in the Permit, the permitted facility is to be modified and operated as represented in the permit applications dated April 15, 2005 and May 1, 1997 including amendment

information dated August 4, 2005, May 25, 2005 and January 16, 2003. Any changes in the permit application specifications or any existing facilities which alter the impact of the facility on air quality may require a permit.

- b. Operator training records and a maintenance schedule for the boilers and other process equipment were not available in written form.

Condition 9 of the Permit states that boiler emissions shall be controlled by proper operation and maintenance. Boiler operators shall be trained in the proper operation of all such equipment. Training shall consist of a review and familiarization of the manufacturer's operating instructions, at minimum. The Permittee shall maintain records of the required training including a statement of time, place, and nature of training provided. The Permittee shall have available good written operating procedures and a maintenance schedule for the boilers. At a minimum, these procedures shall be based on the manufacturer's recommendations. Any and all records required by this condition shall be kept on site and made available for review by the Department.

Condition 18 of the Permit states that the Permittee shall maintain records of all emission data and operating parameters necessary to demonstrate compliance with this permit. These records shall include boiler operator training.

Condition 25 of the Permit states that the Permittee shall take the following measures in order to minimize the duration and frequency of excess emissions, with respect to air pollution control equipment and process equipment which affect such emissions: Develop a maintenance schedule and maintain records of all scheduled and non-scheduled maintenance. Train operators in the proper operation of all such equipment and familiarize the operators with the written operating procedures. The Permittee shall maintain records of the training provided including the names of trainees, the date of training and the nature of the training. Records of maintenance and training shall be maintained on site for a period of five years and shall be made available to Department personnel upon request.

- c. Fuel records were available, but annual fuel throughputs were not calculated monthly as the sum of each consecutive 12-month period.

Condition 18 of the Permit states that the Permittee shall maintain records of all emission data and operating parameters necessary to demonstrate compliance with this permit. These records shall include but are not limited to daily, monthly, and annual throughputs of natural gas (in cubic feet) and distillate oil (in gallons) or alternate records as approved in writing by the Department for each of the four Cleaver-Brooks boilers (Ref. # 1, 3, 4 and 5). Annual throughput shall be calculated monthly as the sum of each consecutive 12-month period. Combined annual throughput of distillate oil (in gallons) to the two boilers (Ref. # 1 and 2), calculated monthly as the sum of each consecutive 12-month period. Combined

annual throughput of distillate oil (in gallons) to the three boilers (Ref. # 3, 4 and 5), calculated monthly as the sum of each consecutive 12-month period.

- d. Ownership changed ~~from Morningstar Foods~~ <sup>eff</sup> to WhiteWave Foods Company on July 31, 2006. DEQ had not received notification of this change.

Condition 27 of the Permit states that in the case of transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the Director of the Valley Regional Office of the change of ownership within 30 days of transfer.

- e. A copy of the permit could not be located and was not available at the facility.

Condition 29 of the Permit states that a Permittee shall keep a copy of the Permit on the premises of the facility to which it applies.

4. To address the items in the NOV and to track progress with corrective actions, the Department and WhiteWave representatives met on June 21, 2007, July 24, 2007, September 18, 2007, October 1, 2007, December 6, 2007, and January 18, 2008.
5. At the June 21, 2007 meeting, WhiteWave presented an improved recordkeeping method to correct the deficiencies noted in items, 3.b., 3.c., and 3.e. above.
6. In the period surrounding the June 21, 2007, July 24, 2007, and September 18, 2007 meetings, WhiteWave assessed operating conditions at the wastewater pretreatment facility, implemented preliminary measures to mitigate odors, and researched odor control alternatives.
7. At the October 1, 2007 meeting, WhiteWave's consultant, Environmental Management Corporation (EMC), presented an alternative operations and maintenance (O&M) plan for the wastewater pretreatment system for the purpose of mitigating objectionable odors.
8. At the December 6, 2007 meeting, EMC reported that the O&M plan had been implemented, including monitoring of parameters critical for odor control. EMC presented additional odor control recommendations, including covers for specified wastewater treatment tanks, air scrubbing of the odorous emissions from the enclosed tanks and dissolved air floatation (DAF) treatment building, and studying the use of supplemental treatment with pure oxygen during periods of warm weather and emergency or accidental release events.
9. At the January 18, 2008 meeting, EMC provided a scope of work and schedule for the additional odor control recommendations.

**SECTION D: Agreement and Order**

By virtue of the authority granted to the State Air Pollution Control Board pursuant to Va. Code §§ 10.1-1186(2), 10.1-1309, and 10.1-1316(C), orders WhiteWave, and WhiteWave voluntarily agrees to the following conditions in settlement of the violations cited in this Order:

1. WhiteWave agrees to a civil charge of **\$5,564.00** in settlement of the violations cited in this Order **within 30 days** of the effective date of this Order. Payment must indicate that the civil charge is paid pursuant to this Order, and shall include WhiteWave's Federal Identification Number. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of the Commonwealth of Virginia" and sent to: Receipts Control, Department of Environmental Quality, Post Office Box 1104, Richmond, Virginia 23218.
2. WhiteWave shall comply with the terms and conditions as set out in Appendix A of this Order.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of WhiteWave, for good cause shown by WhiteWave, or on its own motion after notice to WhiteWave and its opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order only, WhiteWave admits the jurisdictional allegations in the Order. However, by entering into this Consent Order, WhiteWave does not admit any liability to the Board arising out of the transactions or occurrences alleged by the Board, nor does it admit to any of the Board's findings of fact and conclusions of law. Nothing in the allegations, the proposed penalties, this Consent Order, or the signing, execution, or implementation of this Consent Order constitutes an admission by WhiteWave or evidence of, or shall be treated as an admission or evidence of, any allegation or of any violation of the statute and regulations referred to herein, in any litigation or forum whatsoever.
4. WhiteWave consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. WhiteWave declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained

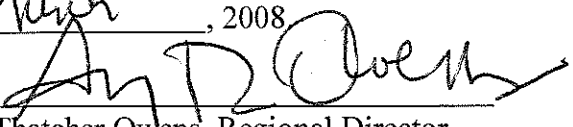
herein. Nothing herein shall be construed as a waiver of the right of WhiteWave to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by WhiteWave to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. WhiteWave shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. WhiteWave shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part; provided that nothing herein shall require WhiteWave to negotiate or settle any strike or labor dispute. WhiteWave shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. The reasons for the delay or noncompliance;
  - b. The projected duration of any such delay or noncompliance;
  - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.
9. Failure to so notify the Regional Director within 2 business days of learning of any condition above, which WhiteWave intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
10. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and WhiteWave. Notwithstanding the foregoing, WhiteWave agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until WhiteWave petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or the Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to WhiteWave.

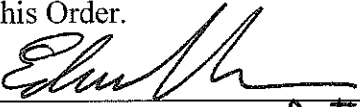
13. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve WhiteWave from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

14. By its signature below, WhiteWave voluntarily agrees to the issuance of this Order.

And it is so ORDERED on the 13<sup>th</sup> day of March, 2008

  
Amy Thatcher Owens, Regional Director  
Valley Regional Office  
Department of Environmental Quality

WhiteWave voluntarily agrees to the issuance of this Order.

By:   
Authorized Signatory

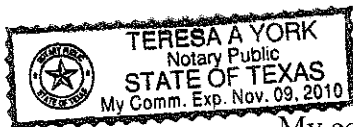
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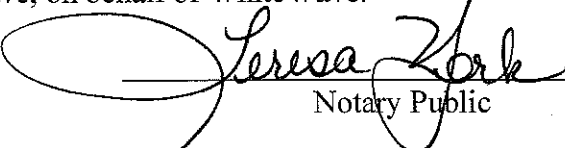
State of Texas  
Commonwealth of Virginia

City/County of Dallas

The foregoing document was signed and acknowledged before me on the 12<sup>th</sup> day of March, 2008, by Edward Herman, who is  
(name)

Authorized Signatory of WhiteWave, on behalf of WhiteWave.  
(title)



  
Notary Public

My commission expires: Nov. 09, 2010

## APPENDIX A

In addition to the foregoing, the Virginia State Air Pollution Control Board orders and WhiteWave agrees to implement this corrective action plan as an additional provision to this Order.

1. WhiteWave shall submit a complete Form 7 air permit application to reflect current ownership, equipment, and process operations. The Form 7 shall include the proposed odor control equipment and abatement measures specified in this Appendix and any other proposed process or equipment modifications. At its discretion, the Department may include the odor control equipment and/or abatement measures as applicable requirements in the modified or amended air permit. The Form 7 shall be submitted within 30 days of the effective date of this Order.
2. WhiteWave shall install and operate odor controls at process areas where objectionable odors may be present. These controls shall include, but not be limited to, the following:
  - a. Tank covers on the Equalization Tank (T-200) and the Sludge Tank (T-800).
  - b. A carbon adsorption system (or equivalent) for treating malodorous emissions from the enclosed tanks referenced above and the DAF treatment building.

Installation and implementation shall follow the schedule in the table below:

Task Name	Start Date	Completion Date
Scrubber Project Management	March 2008	September 2008
Equipment Purchase	March 2008	May 2008
Engineering	March 2008	May 2008
Construction	March 2008	September 2008
Construction Management	June 2008	September 2008
Equipment Commissioning	September 2008	September 2008

3. To further mitigate objectionable odors from the wastewater pretreatment system, WhiteWave shall implement a pilot test for supplemental treatment with pure oxygen during periods of warm weather and for emergency or accidental release events. Pilot test development and implementation shall follow the schedule in the table below:

Task Name	Start Date	Completion Date
Equipment Purchase	March 2008	April 2008
Engineering	March 2008	April 2008
Construction	March 2008	June 2008
Construction Management	May 2008	June 2008
Equipment Commissioning	June 2008	June 2008

WhiteWave shall submit the results of the pilot test by August 29, 2008. If feasible, WhiteWave shall develop and implement a procedure for using pure oxygen in these instances for inclusion in the O&M plan referenced in Item 4 below.



4. WhiteWave shall develop and implement a written O&M plan for the wastewater pretreatment system to ensure proper operation and maintenance, to include mitigation of objectionable odors. The O&M plan shall be completed and made available for review by DEQ by September 19, 2008. At its discretion, the Department may include a requirement in the modified or amended air permit for WhiteWave to review the O&M plan on an annual basis and revise the plan, if necessary, to reflect process changes impacting wastewater operations.
5. An emergency action plan shall be developed and implemented by May 01, 2008 (and shall be included in the O&M plan referenced in Item 4 above) to address high volume or high strength discharges diverted to the calamity tank. The procedures will be developed to mitigate and control any possible odor episodes while the discharge is held in the calamity tank.
6. WhiteWave shall submit monthly reports documenting the progress of the items in this Appendix until such time that all items are completed. Each monthly report shall be submitted no later than 30 days after the end of the calendar month. The first monthly report shall cover March – April 2008, and shall be submitted by May 31, 2008.